IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

State of Rajasthan through
Chief Engineer & Anr.
vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.3746/1995 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

REPORTABLE

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Rameshwar Dave, Dy. Govt. Advocate.
Mr.Pradeep Choudhary, Advocate for the respondents.

BY THE COURT

The State of Rajasthan though its Chief Engineer, Indira Gandhi Nahar Pariyojna, Jaisalmer and Executive Engineer, 19th Division, Indira Gandhi Nahar Pariyojna, Jaisalmer in the present writ petition has challenged the award passed by the learned labour court dated 10th October, 1995.

An industrial dispute was referred to the learned Labour Court, Jodhpur by appropriate Government vide notification dated 15th February, 1990 on the question whether a removal of the respondent-workman Nena Ram by Executive Engineer, Jaisalmer from their services was illegal and justified and if not what relief he was entitled to.

Case set up by the workman in the statement claim before the learned labour court was that he was appointed in the department in August, 1984. He was thereafter granted regular pay scale on the post of Beldar vide order dated 10th May, 1985. Suddenly however he was removed from service vide order dated 16th October, 1987. It was later discovered that the workman had secured such appointment on the basis of forged and fake appointment order. According to the workman if that was so, the management was required to serve charge-sheet upon him and hold an enquiry.

Allegation of forgery was a serious charge and if there was any shread of truth in the allegation, the management would have certainly lodged a criminal case. His removal was made in the violation of Section 25-F of the Industrial Disputes Act, because he had already completed more than 240 days in the calender year immediately preceding the date of his removal. It was therefore prayed that the removal order dated 16th October, 1987 be quashed and set aside and the workman be entitled to reinstatement with full back wages in continuity with service.

The case of the workman was contested by the management who in its reply before the court contended that the workman had given joining on the strength of appointment order issued by Superintending Engineer (Admn.) o/o Chief Engineer, IGNP, Bikaner. This was a forged and fabricated document. When the Chief Engineer by his order dated 15th June, 1987 directed for an enquiry into the matter, the personal officer in the office of Chief Engineer, IGNP, Bikaner vide his letter dated 06th October, 1987 conveyed that no such appointment order was ever issued in the name of respondent-workman. It was established that appointment of respondent workman was as a result of forgery and therefore he was removed from service. Realizing this, when the enquiry was

being made, the respondent workman at his own stopped attaining the office from 01st October, 1987. The office by its order dated 17th October, 1987 also directed for lodging a criminal case. Section 25-F of the Act were applicable only in the case where the workman was appointed lawfully and not on the strength of a forged order.

The learned labour court on the basis of evidence before it concluded that even if removal of the workman was made on the basis of allegation that he secured appointment on the strength of forged document, the management ought to have held an enquiry as this amounted to removal on charge of misconduct. The learned labour court therefore held removal of the workman w.e.f. 19th February, 1990 as illegal and further held him entitled to reinstatement in service for 25% of back wages.

I have heard Mr.Rameshwar Dave, learned Dy. Govt. Advocate and Mr.Pradeep Choudhary, learned counsel for the respondents and perused the record.

Learned Dy. Govt. Advocate in assailing the validity of the award has argued that the respondent workman was not entitled to any relief whatsoever because he had secured the employment on

the basis of forged and fabricated appointment order. There was never any relationship of master and servant between the management and the workman and the provisions of Industrial Disputes Act especially Section 25-F thereof cannot be applied in the case of a person who has secured appointment on the strength of forged document. When the genuineness of the document was disputed before the learned labour court, the Court ought to have required the workman to prove that it was genuine appointment order and was not forged and fabricated. It has been argued that signatures of the Superintending Engineer contained on the appointment order was forged and the criminal case was pending before the court of competent jurisdiction.

Learned Dy. Govt. Advocate cited a judgment of Hon'ble Supreme Court in U.P. Junior Doctors' Action Committee vs. Dr.B. Sheetal Nandwani reported in AIR 1991 SC 909 wherein certain students had secured admission to post graduate medical course on the basis of fake orders passed in a non-existent writ petition. In those facts, the Hon'ble Supreme Court held that when their admissions were cancelled, no opportunity of hearing was required to be given to such candidate. He also relied upon the judgment of Hon'ble Supreme Court in Krishan Yadav & Anr. vs. State of Haryana

& Ors., reported in AIR 1994 SC 2166 wherein entire selection proceedings were shown to have been made without any interview, fake and ghost interviews, tampering with the final records, fabricating documents and committing forgery. In those facts, the Hon'ble Supreme Court set aside the entire selection process even if it affected innocent candidates. The learned Dy. Govt. Advocate also relied upon the judgment of the Hon'ble Supreme Court in Syndicate Bank vs. General Secretary, Syndicate Bank Staff Association & Anr., reported in 2000 (5) SCC 65 wherein certain bank employees was unauthorizedly absenting himself from work for a period exceeding the prescribed limit of 90 days, he was by a notice required by the Bank to join duty within 30 days or else he would be deemed to have retired. In those facts, their Lordship held that no enquiry was necessary and there was no violation of principles of natural justice. Learned Dy. Govt. Advocate also pointed out that petitioner was not the only person, there were like him total 30 such appointments which appointments were made by forged and fabricated order. However out of 27 employees did not join and only 3 namely Teja Ram S/o Chet Ram, Bhopal Singh and Nena Ram joined. Action against other two is also being taken in disciplinary proceedings for their removal which are being held in compliance with the award passed by learned labour court.

On the other hand, learned counsel argued that the respondent workman was appointed as casual labour on daily wages basis and after completion of two years he was declared work-charged employee in regular pay scale of Rs.350-430 vide order dated 10th May, 1985. Apart from the respondent-workman, there were many other employees who were declared work-charged employees but when their services were terminated without giving them the opportunity of hearing, not only the petitioner but others also assailed the action of the department. Apart from the respondent workman, another workman Naina Ram S/o Gokul Ram also raised the industrial dispute and the learned labour court vide its award dated 21st September, 1995 answered the reference in his favour directing his reinstatement with 25% back wages. Not only that, the writ petition filed in his case against the said award by the State Government namely writ petition No.3249/1996 was dismissed by this Court on 04th February, 1996 and their against D.B. Civil Special Appeal No.4/1997 was also dismissed on 14th May, 1997. The award of the learned labour court passed in the similar case thus attained certain finality. The case of the respondent workman was in no way distinguishable from that of Nena Ram S/o Gokul Ram. Learned counsel argued that the respondent workman has already been acquitted of the charge of forgery by the Court of Civil

Judge (Junior Division) cum Judicial Magistrate, First Class, Jaisalmer under his judgment dated 27th May, 1997, copy whereof has been placed on record with reply to the writ petition. Learned counsel argued that the reason on which removal of the petitioner was made, was the charge of misconduct of forgery. It was therefore necessary for the management to have held a regular departmental inquiry. Moreover, it has been argued that prior to removal of the respondent-workman, no opportunity of hearing was given to him.

Learned counsel relied upon the judgment of Hon'ble Supreme Court in Mohd. Yunus vs. Mohd. Mustaqim & Ors., reported in AIR 1984 SC 38 for the proposition that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot correct the errors of law in the orders passed by any court of the tribunal subordinate to it. The learned counsel also relied upon the judgment in Miss Shivani Kaur & 14 Ors. vs. Board of Secondary Education, Rajasthan, Ajmer & Ors., reported in 1992 (2) WLC (Raj.) 644 wherein cancellation of admission granted to the students without affording the opportunity of hearing to them was held to be illegal having been vitiated for violation of rule of natural justice. Learned counsel also relied upon the judgment of Hon'ble Supreme Court in AIR 2002 SC 2914 wherein the relevant clause in a standing

order providing for automatic termination of service was held to contain an in-built requirement of natural justice. Another judgment relied upon by the learned counsel for the respondent is Subodh Kumar Prasad vs. State of Bihar & Ors., reported in 2001 (10) SCC 282 wherein the termination of the employee from service on the ground of appointment letter being found fake was held to be illegal because this was determined merely on the basis of examination of dispatch register and not by examining the appointment letter itself. Lastly the learned counsel relied upon the judgment of Hon'ble Supreme Court in Nar Singh Pal vs. Union of India & Ors., reported in AIR 2000 SC 1401 wherein services of a casual labour in a Government department having worked for more than 10 years and acquired temporary status were terminated because he was prosecuted for criminal offenses on allegation of gate man on duty in which he was eventually acquitted. It was held that his termination on the basis of said incident merely on the basis of preliminary inquiry and not by holding a regular departmental enquiry by giving him charge-sheet and opportunity of hearing was punitive in nature and therefore liable to be set aside. It was therefore argued that the writ petition be dismissed with costs.

I have given my thoughtful consideration to the arguments

advanced by learned counsel for the parties and perused the record.

At the outset, it may be made clear that even in a departmental enquiry on the charge of securing appointment on the strength of forged or fabricated document such as decree or certificate of eligibility qualification, the burden of proof would always be on the person who has secured the appointment on the strength of such document. The department may have initiated the action by serving the charge-sheet on the delinquent, but when the matter is before the learned labour court, the core of the controversy was the genuineness of the appointment order. Securing an appointment on the basis of forged and fabricated document was indeed a serious matter. However perusal of the award passed by the learned labour court reveals that it has treated termination from service in the present case just like retrenchment in an ordinary industrial dispute, even though the management had categorically come out with the plea that the appointment was secured on the strength of a forged and fabricated documents. Applicability of principles of natural justice would always depend on the facts of a given case. In the present case when the parties were already before the learned labour court, it should have required the workman to prove the genuineness of the appointment order when

the management had categorically asserted that in their department no such appointment order was found to have been issued. Compliance of Section 25-F in the facts of the present case could not be insisted upon because the one of requisite conditions of compliance of this provisions is the genuine appointment with the employer which in the present case is the Government department. Impugned award thus suffers from the error apparent on the face of record in that it has failed to correctly apply the law while making adjudication of the industrial dispute.

Hon'ble Supreme Court in Chief Engineer vs. Samla reported in 2006 SC 2682 even on the question whether or not the workman has completed 240 days in a calender year immediately preceding the date of termination held that the burden of proof whether or not, lay on the workman or not on employer and this pronouncement was made by their Lordship while following as many as 12 earlier Supreme Court judgments referred to therein. When the law regarding burden of proof even on the question of completion of 240 days requires the workman to prove so, the very genuineness of the appointment order in the face of categorical plea taken by the management that it was forged indeed lay on the workman.

The reliance placed by learned counsel for the respondent workman in the judgment passed by the Court of Civil Judge (Junior Division) cum Judicial Magistrate (First Class), Jaisalmer dated 27th May, 1979 wherein he was acquitted of the charge under Sections 420, 476, 468 and 471 IPC is of no avail because even in that judgment, the learned court on the basis of evidence recorded in that case and especially the FSL report proved as Exhibit-P/49 has recorded a categorical finding that the appointment order Exhibit-P/1 was forged but acquitted the respondent workman by giving him benefit of doubt because prosecution could not prove that it was he who prepared the forged appointment order. Although the learned counsel for the parties have cited many judgments but one of the judgments each on their side is relevant to the controversy involved in the present case. The Hon'ble Supreme Court in U.P. Junior Doctors' Action Committee (supra) cited by the learned Dy. Govt. Advocate held that the principles of natural justice would have no application to a case where admission to PG Medical course was secured by the candidates on the basis of fake order in a non-existent writ petition shown to have been procured from the Lucknow Bench of Allahabad High Court and such fake orders being non-existent were declared as bogus and on that basis another

order was secured from High Court. Some of the candidates whose admissions were sought to be cancelled were not even before the Hon'ble Supreme Court, yet their Lordship held that circumstances in which such candidates have taken the benefit do not justify attraction of the application of the rules of natural justice and providing opportunity of hearing.

On the other hand, the judgment of the Hon'ble Supreme Court in Subodh Kumar Prasad cited by learned counsel for the respondent workman wherein the learned Single Judge of the High Court had called for dispatch register of the department concerned and on mere fact that the appointment letter was not entered therein, concluded that the appointment order was fake.

In my considered view, the award passed by the learned trial court suffers from errors apparent on the face of record inasmuch as, it committed serious error in misapplying the law regarding burden of proof and principles of natural justice on the facts of the present case by declaring removal of the workman as illegal and directing his reinstatement with 25% back wages.

It is trite law that the charges in the departmental

proceedings are required to be proved by preponderance of evidence but when the matter is before the court in a criminal prosecution, such charges would be required to be proved beyond reasonable doubt. Although in the present case the prosecution failed to prove that the offence of forgery in preparing the appointment order was committed by the respondent-workman and therefore he was given benefit of doubt and was acquitted but the court on the basis of evidence adduced before it recorded a categorical finding that the appointment order was forged one. Whether or not the respondent-workman himself forged the order, the fact remains that he was beneficiary of that order having been allowed to join and work on the strength of that order with the management and when the matter was before the labour court, the court should have required him to prove genuineness of his appointment order rather than finding fault with the action of management in dispensing with his services on alleged infraction of principles of natural justice. Object of the principles of natural justice is only to ensure that the person who is going to be affected by proposed action gets a fair hearing and a fair deal but applicability of those principles would always depend upon the context and the facts and circumstances of the each case. Compliance with the principles of natural justice is intended to achieve the ends of justice

but they cannot be perverted to achieve the very opposite end. The Hon'ble Supreme Court in Sate Bank of Patiala & Ors. vs. S.K. Sharma reported in 1996 (3) SCC 364 observed as under:-

> "**32.**..... Justice means justice between both the parties. The interest of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

As a result of aforesaid discussion, the present writ petition succeeds and is hereby allowed. The award passed by the learned labour court dated 10th October, 1995 is set aside. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-